

AMENDED IN ASSEMBLY MAY 5, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1246

Introduced by Assembly Member Jones

February 27, 2009

An act to amend Section 11003.4 of the Business and Professions Code, and to amend Section 33007.5 of, to add Sections 33007.6 and 33007.7 to, and to add Article 4 (commencing with Section 33520) to Chapter 5 of Part 1 of Division 24 of, the Health and Safety Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1246, as amended, Jones. Housing cooperative trust and workforce housing cooperative trust.

(1) Existing law defines “limited-equity housing cooperative” to be a corporation that meets specified criteria. Existing law exempts a limited-equity housing cooperative from specified requirements for the regulation of transactions of subdivided lands.

This bill would revise the definition of a “limited-equity housing cooperative” to also apply to a “housing cooperative trust” and “workforce housing cooperative trust.” The bill would exempt an entity as so defined from these provisions governing the regulation of transactions of subdivided land if, among other organizations, the Federal Home Loan Bank System or any of its member institutions and school districts directly finance or subsidize at least 50% of the total construction or development cost or \$100,000, whichever is less. The bill also would exempt such an entity from these provisions if the real

property to be occupied by the cooperative was sold or leased by the Department of Transportation, other state agency, a city, a county, or a school district for the development of the cooperative and has a regulatory agreement, as specified.

(2) The Community Redevelopment Law defines “limited-equity housing cooperative” to mean a corporation organized on a cooperative basis that meets specified requirements.

This bill would revise the definition of a “limited-equity housing cooperative” to also apply to a “housing cooperative trust” and “workforce housing cooperative trust.” The bill would prohibit a board of directors from returning transfer value, either full or partial, to a member of the board while he or she still remains a member of the board, and would prohibit an existing member of the board of directors from accepting the return of his or her transfer value, either full or partial. The bill would require that, in any suit against a board of directors and its members for not upholding the statutes that apply to such an entity the prevailing party be awarded all attorneys’ fees and compensatory and punitive damages. The bill would prohibit an organization formed under this section that uses public funds from using any corporate funds to avoid compliance with the Community Redevelopment Law, and from pursuing dissolution if the intent or outcome is for the members to occupy those units upon dissolution. The bill would prohibit the members of the board of directors and the board of directors from arranging to occupy units in fee simple or as a rental after dissolution of the organization. The bill would impose procedural requirements relating to the dissolution of ~~the an~~ organization *that receives a public subsidy*.

This bill also would provide for the manner in which a workforce housing cooperative trust is organized and operated, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 11003.4 of the Business and Professions
- 2 Code is amended to read:
- 3 11003.4. (a) A “limited-equity housing cooperative” or a
- 4 “housing cooperative trust” or a “workforce housing cooperative
- 5 trust” is a corporation that meets the criteria of Section 11003.2
- 6 and that also meets the criteria of Sections 33007.5 and 33007.6

1 of the Health and Safety Code, as applicable. Except as provided
2 in subdivision (b), a limited-equity housing cooperative shall be
3 subject to all the requirements of this chapter pertaining to stock
4 cooperatives.

5 (b) A limited-equity housing cooperative, a housing cooperative
6 trust, and a workforce housing cooperative trust shall be exempt
7 from the requirements of this chapter if the limited-equity housing
8 cooperative, housing cooperative trust, or workforce housing
9 cooperative trust complies with all the following conditions:

10 (1) The United States Department of Housing and Urban
11 Development, the Farmers Home Administration, the National
12 Consumers Cooperative Bank, the California Housing Finance
13 Agency, or the Department of Housing and Community
14 Development, the Federal Home Loan Bank System or any of its
15 member institutions, alone or in any combination with each other,
16 or with the city, county, school district, or redevelopment agency
17 in which the cooperative is located, directly finances or subsidizes
18 at least 50 percent of the total construction or development cost
19 or one hundred thousand dollars (\$100,000), whichever is less; or
20 the real property to be occupied by the cooperative was sold or
21 leased by the Department of Transportation, other state agency, a
22 city, a county, or a school district for the development of the
23 cooperative and has a regulatory agreement approved by the
24 Department of Housing and Community Development for the term
25 of the permanent financing, notwithstanding the source of the
26 permanent subsidy or financing.

27 (2) No more than 20 percent of the total development cost of a
28 limited-equity mobilehome park, and no more than 10 percent of
29 the total development cost of other limited-equity housing
30 cooperatives, is provided by purchasers of membership shares.

31 (3) A regulatory agreement that covers the cooperative for a
32 term of at least as long as the duration of the permanent financing
33 or subsidy, notwithstanding the source of the permanent subsidy
34 or financing has been duly executed between the recipient of the
35 financing and either (A) one of the federal or state agencies
36 specified in paragraph (1) or (B) a local public agency that is
37 providing financing for the project under a regulatory agreement
38 meeting standards of the Department of Housing and Community
39 Development. The regulatory agreement shall make provision for
40 at least all of the following:

1 (A) Assurances for completion of the common areas and
2 facilities to be owned or leased by the limited-equity housing
3 cooperative, unless a construction agreement between the same
4 parties contains written assurances for completion.

5 (B) Governing instruments for the organization and operation
6 of the housing cooperative by the members.

7 (C) The ongoing fiscal management of the project by the
8 cooperative, including an adequate budget, reserves, and provisions
9 for maintenance and management.

10 (D) Distribution of a membership information report to any
11 prospective purchaser of a membership share, prior to purchase
12 of that share. The membership information report shall contain
13 full disclosure of the financial obligations and responsibilities of
14 cooperative membership, the resale of shares, the financing of the
15 cooperative including any arrangements made with any partners,
16 membership share accounts, occupancy restrictions, management
17 arrangements, and any other information pertinent to the benefits,
18 risks, and obligations of cooperative ownership.

19 (4) The federal, state, or local public agency that executes the
20 regulatory agreement shall satisfy itself that the bylaws, articles
21 of incorporation, occupancy agreement, subscription agreement,
22 any lease of the regulated premises, any arrangement with partners,
23 and arrangement for membership share accounts provide adequate
24 protection of the rights of cooperative members.

25 (5) The federal or state agency shall receive from the attorney
26 for the recipient of the financing or subsidy a legal opinion that
27 the cooperative meets the requirements of Section 33007.5 of the
28 Health and Safety Code and the exemption provided by this section.

29 (c) Any limited-equity cooperative, housing cooperative trust,
30 or workforce housing cooperative trust that meets the requirements
31 for exemption pursuant to subdivision (b) may elect to be subject
32 to all provisions of this chapter.

33 (d) The developer of the cooperative shall notify the Department
34 of Real Estate, on a form provided by the department, that an
35 exemption is claimed under this section. The Department of Real
36 Estate shall retain this form for at least four years for statistical
37 purposes.

38 SEC. 2. Section 33007.5 of the Health and Safety Code is
39 amended to read:

1 33007.5. “Limited-equity housing cooperative” or a “housing
2 cooperative trust” or a “workforce housing cooperative trust”
3 means a corporation organized on a cooperative basis that, in
4 addition to complying with Section 33007.6 as may be applicable,
5 meets all of the following requirements:

6 (a) The corporation is any of the following:

7 (1) Organized as a nonprofit public benefit corporation pursuant
8 to Part 2 (commencing with Section 5110) of Division 2 of Title
9 1 of the Corporations Code.

10 (2) Holds title to real property as the beneficiary of a trust
11 providing for distribution for public or charitable purposes upon
12 termination of the trust.

13 (3) Holds title to real property subject to conditions that will
14 result in reversion to a public or charitable entity upon dissolution
15 of the corporation.

16 (4) Holds a leasehold interest, of at least 20 years’ duration,
17 conditioned on the corporation’s continued qualification under
18 this section, and providing for reversion to a public entity or
19 charitable corporation.

20 (b) (1) The articles of incorporation or bylaws require the
21 purchase and sale of the stock or membership interest of resident
22 owners who cease to be permanent residents, at no more than a
23 transfer value determined as provided in the articles or bylaws,
24 and that shall not exceed the aggregate of the following:

25 (A) The consideration paid for the membership or shares by the
26 first occupant of the unit involved, as shown on the books of the
27 corporation.

28 (B) The value, as determined by the board of directors of the
29 corporation, of any improvements installed at the expense of the
30 member with the prior approval of the board of directors.

31 (C) Accumulated simple interest, ~~or an inflation allowance at~~
32 a rate that may be based on a cost-of-living index, an income index,
33 or market-interest-index index, *or compound interest if specified*
34 *in the bylaws. For newly formed corporations, accumulated simple*
35 *interest shall apply.* Any increment pursuant to this paragraph shall
36 not exceed a 10 percent annual increase on the consideration paid
37 for the membership or share by the first occupant of the unit
38 involved.

39 (2) For purposes of a return of transfer value, all of the following
40 are prohibited:

1 (A) A board of directors returning transfer value, either full or
2 partial, to a member while he or she still remains a member.

3 (B) An existing member accepting the return of his or her
4 transfer value, either full or partial.

5 (c) The articles of incorporation or bylaws require the board of
6 directors to sell the stock or membership interest purchased as
7 provided in subdivision (b), to new member-occupants or resident
8 shareholders at a price that does not exceed the “transfer value”
9 paid for the unit.

10 (d) The “corporate equity,” which is defined as the excess of
11 the current fair marketed value of the corporation’s real property
12 over the sum of the current transfer values of all shares or
13 membership interests, reduced by the principal balance of
14 outstanding encumbrances upon the corporate real property as a
15 whole, shall be applied as follows:

16 (1) So long as any such encumbrance remains outstanding, the
17 corporate equity shall not be used for distribution to members, but
18 only for the following purposes, and only to the extent authorized
19 by the board, subject to the provisions and limitations of the articles
20 of incorporation and bylaws:

21 (A) For the benefit of the corporation or the improvement of
22 the real property.

23 (B) For expansion of the corporation by acquisition of additional
24 real property.

25 (C) For public benefit or charitable purposes.

26 (2) Upon sale of the property, dissolution of the corporation, or
27 occurrence of a condition requiring termination of the trust or
28 reversion of title to the real property, the corporate equity is
29 required by the articles, bylaws, or trust or title conditions to be
30 paid out, or title to the property transferred, subject to outstanding
31 encumbrances and liens, for the transfer value of membership
32 interests or shares, for use for a public or charitable purpose.

33 (e) Amendment of the bylaws and articles of incorporation
34 requires the affirmative vote of at least two-thirds of the
35 resident-owner members or shareholders.

36 (f) In any suit against a board of directors or its members for
37 not upholding the statutes that apply to limited-equity housing
38 cooperatives, the plaintiff shall be awarded all attorneys fees and
39 punitive damages.

1 (g) (1) If an organization formed under this section uses public
2 funds, it shall not use any corporate funds to avoid compliance
3 with this act and to pursue dissolution if the intent or outcome is
4 for some or all of the members to occupy those units upon
5 dissolution.

6 (2) The members or the board of directors shall not arrange to
7 occupy units in fee simple or as a rental as an outcome of their
8 dissolution of the organization.

9 SEC. 3. Section 33007.6 is added to the Health and Safety
10 Code, to read:

11 33007.6. (a) A “workforce housing cooperative trust” is an
12 entity organized under this section that complies with Section
13 33007.5 and with all of the following:

14 (1) Allows the governing board to be composed of two classes
15 of board members. One class is elected by the residents, and one
16 class is appointed by sponsor organizations, including employer
17 and employee organizations, chambers of commerce, government
18 entities, unions, religious organizations, nonprofit organizations,
19 cooperative organizations, and other forms of organizations.
20 Resident members shall elect a majority of the board members.
21 However, sponsor organizations may appoint up to one less than
22 a majority of the board members. The numerical composition and
23 class of the sponsor and resident board members shall be set in the
24 articles of incorporation and in the bylaws.

25 (2) Requires the charter board of a workforce housing
26 cooperative trust to be composed of only sponsor board members,
27 to remain in place for the first three years after the first resident
28 occupancy. After three years of occupancy, resident members shall
29 elect a majority of the board members.

30 (3) Prohibits the removal of the appointees of sponsor
31 organizations, except for cause.

32 (4) (A) Allows for the issuance of separate classes of shares to
33 sponsor organizations or support organizations. These shares shall
34 be denominated as “workforce housing shares” and shall receive
35 a rate of return of no more than 10 percent simple interest pursuant
36 to paragraph (3) of subdivision (b) of Section 33007.5.

37 (B) A sponsor organization of a workforce housing cooperative
38 trust shall be entitled to perfect a security interest in a cooperative
39 interest or in sponsor shares it has funded.

(5) Requires, upon amendment of the bylaws and articles of incorporation of a workforce housing cooperative trust, as needed, the affirmative vote of at least a majority of the resident-owner members or shareholders and a majority of each class of board members. The rights of the sponsor board members or the sponsors shall not be changed without the affirmative vote of two-thirds of the sponsor board members.

(6) Requires conformance with every aspect of this section to seat sponsor directors in accordance with the original bylaws. These directors shall be removed only for cause. ~~This section also applies to any organization previously formed under this section prior to January 1, 2010, that had sponsor seats designated in its bylaws.~~

(b) A workforce housing cooperative trust shall be entitled to operate at multiple locations in order to sponsor limited-equity housing cooperatives. A workforce housing cooperative trust may either own or lease land for the purpose of developing limited-equity housing cooperatives.

(c) A workforce housing cooperative trust may be created when at least 51 percent of the occupied units in a multifamily property that is in foreclosure support efforts to buy the building or property.

SEC. 4. Section 33007.7 is added to the Health and Safety Code, to read:

33007.7. The procedure for the dissolution of a ~~limited-equity~~ *limited-equity* housing cooperative, housing cooperative trust, or workforce housing cooperative trust, *as defined in Section 11003.4 of the Business and Professions Code, that receives a public subsidy* shall be as follows:

(a) A public hearing, conducted by the county in which the ~~limited-equity~~ *limited-equity* housing cooperative, housing cooperative trust, or workforce housing cooperative trust is located, shall be held. The cooperative or trust shall pay for all costs associated with the public hearing.

(b) The county shall provide notice to all interested parties. The notice shall be given at least 120 days prior to the date of the hearing. The notice shall be provided to all other ~~limited-equity~~ *limited-equity* housing cooperatives and cooperative development organizations in the state in an effort to create a merger with an existing ~~limited-equity~~ *limited-equity* housing cooperative, housing

1 cooperative trust, or workforce housing cooperative trust, and shall
2 be mailed first-class, postage prepaid, in the United States mail.

3 (c) If the dissolving ~~limited-equity~~ *limited-equity* housing
4 cooperative, housing cooperative trust, or workforce housing
5 cooperative trust merges with an existing cooperative or trust, to
6 the extent possible, the merger shall be with the geographically
7 closest cooperative or trust.

8 (d) If the dissolving ~~limited-equity~~ *limited-equity* housing
9 cooperative, housing cooperative trust, or workforce housing
10 cooperative trust does not merge with an existing cooperative or
11 trust, both of the following shall occur:

12 (1) The public hearing required under subdivision (a) shall
13 ensure that any dissolution plan is free of private inurement, and
14 meets the requirements of state and federal law.

15 (2) Any dissolved housing units held by the ~~limited-equity~~
16 *limited-equity* housing cooperative, housing cooperative trust, or
17 workforce housing cooperative trust shall be made available
18 through a public lottery supervised by the county in which the
19 cooperative or trust is located.

20 SEC. 5. Article 4 (commencing with Section 33520) is added
21 to Chapter 5 of Part 1 of Division 24 of the Health and Safety
22 Code, to read:

23
24 Article 4. Actions Involving Limited-Equity Housing
25 Cooperatives, Housing Cooperative Trusts, and Workforce Housing
26 Cooperative Trusts
27

28 33520. Each entity named as a sponsor organization of a
29 workforce housing cooperative trust formed under Section 33007.5
30 shall have the legal standing of a member unless it revokes, in
31 writing, its sponsorship.

32 33521. In any action instituted against a board of directors and
33 its members based upon a breach of corporate or fiduciary duties
34 or a failure to comply with statutes that apply to limited-equity
35 housing cooperatives, housing cooperative trusts, or workforce
36 housing cooperative trusts, the prevailing party shall be awarded
37 compensatory and punitive damages and attorney's fees.